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PTO/SB/64 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

0121-0120

First named inventor: Charles Martinka

Application No.: 09/997,805

Art Unit: 3723

Filed: November 30, 2001

Examiner: James G. Smith

Title: ADJUSTABLE PLIERS

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of Amendment C (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.

- ☐ has been paid previously on \_\_\_\_\_.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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04/22/2005 AWONDAF1 00000027 501039 09997805

01 FC:2453

750.00 DA

## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

<p>_____ Signature</p> <p>Stephen B. Heller Typed or printed name</p> <p>200 West Adams Street - Suite 2850 Address</p>	<p>04/19/2005 Date</p> <p>30,181 Registration Number, if applicable</p> <p>312-236-8500 Telephone Number</p>
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Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

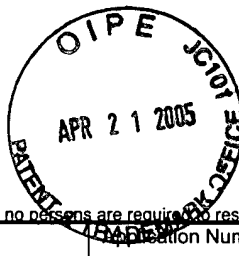
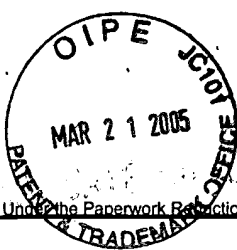
☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

04/19/2005  
Date

\_\_\_\_\_  
Signature

Christine A. Barglik

Typed or printed name of person signing certificate



PTO/SB/21 (09-04)

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/997,805
Filing Date	11/30/2001
First Named Inventor	Charles Martinka
Art Unit	3723
Examiner Name	James G. Smith
Attorney Docket Number	0121-0120

**ENCLOSURES (Check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<b>Remarks</b> Other Enclosures:  - Return Postcard		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.		
Signature			
Printed name	Stephen B. Heller		
Date	04/19/2005	Reg. No.	30,181

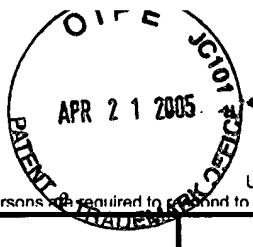
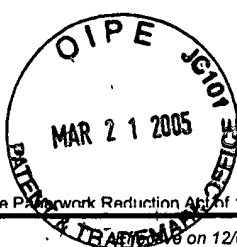
**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Christine A. Barglik	Date	04/19/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (12-04v2)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 750.00

**Complete if Known**

Application Number	09/997,805
Filing Date	11/30/2001
First Named Inventor	Charles Martinka
Examiner Name	James G. Smith
Art Unit	3723
Attorney Docket No.	0121-0120

**METHOD OF PAYMENT** (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 50/1039 Deposit Account Name: Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, **except for the filing fee**

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Fee (\$)	Small Entity Fee (\$)
50	25
200	100
360	180

**Total Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	_____	_____	_____	_____

- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Petition for Revival of An Application for Patent Abandoned

Other (e.g., late filing surcharge): Unintentionally Under 37 CFR 1.137(b)**Fees Paid (\$)**

750.00

**SUBMITTED BY**

Signature

Registration No. 30,181  
(Attorney/Agent)

Telephone 312-236-8500

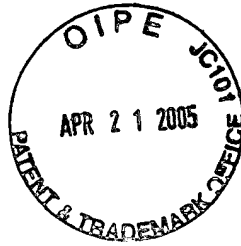
Name (Print/Type)

Stephen B. Heller

Date 04/19/2005

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PATENT  
Attorney Docket No. 0121-0120

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
Charles Martinka  
  
Serial No.: 09/997,805  
  
Filed: November 30, 2001  
  
Examiner: James G. Smith  
  
Art Unit: 3723  
  
For: ADJUSTABLE PLIERS

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DATE: April 19, 2005

NAME: Christine A. Barglik

SIGNATURE: *Christine A. Barglik*

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

AMENDMENT C

Sir/Madam:

In response to the Office Action dated June 16, 2004, please amend the above-identified application as follows.

IN THE CLAIMS:

Please amend claim 1 to read as follows:

Please cancel claim 8.

1. (Currently Amended)      An adjustable pliers comprising;  
  
first and second elongated members, each elongated member comprising a handle, a jaw,  
and an intermediate portion between the handle and the jaw;  
  
the intermediate portion of the first elongated member including an elongated slot having  
a first end adjacent the jaw associated with the first member and a second end spaced from the  
first end;  
  
the intermediate portion of a second elongated member including a pivot pin that is  
slidingly captured in the elongated slot, the first elongated member being pivotable about the  
pivot pin to permit the jaws to be selectively opened or closed about a work piece and being  
slidable along the elongated slot to adjust the spacing between the jaws; and  
  
a spring captured in the elongated slot between the pivot pin and the second end of the  
slot and engaging the pivot pin so as to bias the jaw of the second elongated member toward the  
jaw of the first elongated member.
2. (Previously Presented)      The adjustable pliers of claim 1 wherein the second elongated  
member includes a stop pin in its intermediate portion that is adapted to abut the intermediate  
portion of the first elongated member in order to limit the degree to which the second elongated  
member can pivoted about the pivot pin.
3. (Previously Presented)      The adjustable pliers of claim 2 wherein the intermediate portion  
of the first elongated member includes a series of notches external to the elongated slot, so that  
the stop pin of the second elongated member nests in a notch when it abuts the intermediate

portion of the first elongated member.

4. (Original) The adjustable pliers of claim 1 further comprising a spring retainer located in the elongated slot of the first elongated member.

5. (Original) The adjustable pliers of claim 4 wherein the spring comprises a coil spring and the spring retainer comprises a post over which the coil spring nests.

6. (Original) The adjustable pliers in claim 1 wherein the first and second elongated members each comprises a plurality of plates that are secured together.

7. (Original) The adjustable pliers in claim 6 wherein the plates are secured together by rivets.

8. (Cancelled)

## REMARKS

We are in receipt of the Office Action dated June 16, 2004, and the above Amendment and following remarks are made in light thereof.

Claims 1-8 are pending in the application. Pursuant to the Office Action, claim 8 is rejected under 35 USC §112 for indefiniteness. Claim 8 has been cancelled, thus rendering this rejection moot.

Claims 1-3 and 8 are rejected under 35 USC §103(a) as being unpatentable over either UK 573,204 (Marti) or DE 844,128 (Brass) in view of Litchfield U.S. 1,207,947. Claims 4 and 5 stand rejected for being obvious over Marti or Brass in view of Litchfield, and further in view of Wilbur U.S. 284,933. Claims 6 and 7 are rejected as being obvious over either Marti or Brass in view of Litchfield, and further in view of Ping 6,116,124. These rejections are identical to those made in the Office Actions of June 10, 2003 and September 16, 2003.

Brass is directed to a typical channel-pipe adjustable pliers. The Brass pliers include a pawl “b” which, when engaged with a serration in one of the handle members, prevents the narrowing of the space between the jaws. In contrast to the present invention, the pliers disclosed in Brass are not self-sizing and do not permit one-handed operation. Specifically, in order to adjust the spacing between the jaws and the Brass pliers, first the pawl must be pivoted about screw “g” in order to move out of engagement with a tooth, and then a handle taken in each hand in order to slide the pivot along the slide to the appropriate position, maintaining that position, and then engaging the pawl with the appropriate tooth in order to prevent the jaws from moving towards each other.

Marti also disclosed a conventional channel-type adjustable pliers. The only difference between the pliers disclosed in Marti and those in Brass is the pawl that Brass uses for



maintaining the jaws in a particular position. Marti uses a tooth 8 formed on one of the jaws for engaging the toothed rack 6. Marti also requires two hands in order to adjust the jaws to the desired spacing.

Litchfield is directed to a tool having movable jaws for gripping or cutting an object located there between. It includes a first handle 8 with an integral jaw 1 and a second jaw 2 pivotally connected the first handle 8 by a pivot bolt 9, and a second handle 15 pivotally connected to the jaw 2 by a pivot bolt 16. The pivot bolt 9 is received in a slot 10 in the handle 8, with coil spring 11 interposed between the pivot bolt 9 and the outer extremity of the slot 10. By separating the second jaw from the handle 15, Litchfield has provided a tool that progressively closes and locks the jaws about a work piece by actuation of the handle. Specifically, movement of the handles produces only a partial closing movement of the jaws, the entire closing movement of the jaws being produced by successive relative contracting and expanding movement of the handles. Thus, a relative step-by-step movement is imparted to the jaws, the coil spring 11 acts against the pivot 9 and the outer end of the slot 10 to move the handle 8 so as to restore the pivot 9 to the inner extremity of this slot to initiate further closing action of the jaws upon manipulation of the handles.


In the present case, there would be no incentive to include the spring 11 from Litchfield with either of the pliers disclosed by Marti or Brass because the Litchfield tool utilizes spring 11 in connection with its mechanism for progressively closing the jaw members. There is no similar structure or purpose in either of the Marti or Brass pliers. Thus, the only incentive for combining these references is the teaching of the present application, which is clearly improper.

In the Office Action of June 16, 2004, the Examiner asserts that, in Litchfield, there is clearly a suggestion to add an automatic biasing feature to a pair of pliers. This greatly

overstates the case. While Litchfield does use a biasing spring, combining Litchfield with either Brass or Marti does not result in the claimed invention. In Litchfield, the pivot pin 9 is secured to the fixed jaw 1, and the spring 11 serves to bias the handle 8 carrying the moveable jaw 2 away from the fixed jaw 1. This is similar to the prior art Chow US 5,660,089 and Hill et al. US 4,429,460 patents discussed in the Background of the Invention section of the pending application. In contrast, in the present invention, the pivot pin 32 is attached to the moveable jaw 26 and the spring 34 serves to bias the handle carrying the moveable jaw toward the fixed jaw, which is important for achieving one-handed sizing of the jaw members with respect to the workpiece. This is reflected in the claims, which require an elongated slot in the intermediate portion of the first elongated member, the "second elongated member" including the pivot pin, and the spring being captured in the elongated slot between the pivot pin and the second end of the slot.

Accordingly, applicant submits that the pending claims are patentable over the prior art of record. Thus, reconsideration and allowance of the pending claims is respectfully requested.

Respectfully submitted,



Stephen B. Heller  
Registration No.: 30,181

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